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6
7 UNITED STATES DISTRICT COURT
8
9 DISTRICT OF NEVADA

10 JAMES RUHLMANN and ERIC SAMBOLD,
11 Plaintiffs,
12 v.
13 GLENN RUDOLFSKY, individually and
14 KIM D. RUDOLFSKY, individually; and
15 HOUSE OF DREAMS KAUAI, INC.,
a New York Domestic Business Corporation
16 Defendants.

CASE NO.: 2:14-cv-00879-RFB-NJK

**MOTION TO MODIFY
SCHEDULING ORDER**

16 Plaintiffs, JAMES RUHLMANN and ERIC SAMBOLD, by and through their counsel,
17 ELIZABETH J. FOLEY and MARGARET G. FOLEY, ESQ., respectfully move the Court for an
18 order modifying the June 2, 2016 Discovery Plan to include the later dates set forth in the
19 Amended Joint Discovery Plan filed August 10, 2016 on the basis that good cause exists for such
20 extension. This Motion is based on the following Points and Authorities, Federal Rule of Civil
21 Procedure 16(b)(4), and Local Rule 26-4.

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23 **POINTS AND AUTHORITIES**

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25 **I.**

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27 **FACTUAL BACKGROUND**

28 Plaintiffs served written discovery on the Defendants on June 6, 2016. A true copy of the
Requests for Production of Documents and Interrogatories were filed as Documents 92-3 and 92-
4. Rather than answer the discovery requests, the Defendants filed a Motion for Protective Order

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1 on July 9, 2016, which was heard by the Court on July 29, 2016 along with four other pending
2 motions. During the course of argument on the Motion for Protective Order, Plaintiffs' counsel
3 brought to the District Judge's attention that the expert witness designation dates in the June 2,
4 2016 Scheduling Order were no long feasible because the Defendants waited the full thirty days
5 to file the Motion for Protective Order and then waited another three weeks to ask for forty-five
6 more days to respond to the discovery requests. (Exhibit 1 hereto, page 37, lines 24-25 through
7 page 39, line 13). During the course of the July 29, 2016 hearing, the Court stated, "Well, we
8 can always adjust the discovery schedule based on the production, but I also want – obviously
9 want to move forward since the case has been pending for some time now". Exhibit 1, page 39,
0 lines 14-17).

Following the July 29, 2016 hearing, counsel for the parties stipulated to extend the discovery dates to accommodate the delayed start to the discovery caused by the delayed response to the Document Requests and Interrogatories. As of this filing on September 1, 2016, the Discovery served on June 6, 2016, has not yet been substantively responded to or filed a motion to compel.

II.

LEGAL DISCUSSION

1. DISCOVERY UNDERTAKEN TO DATE

Local Rule 26-4(1) requires that requests for modification of the Court's scheduling orders include a statement specifying the discovery completed. To date, only the discovery filed herein as Documents 92-3 and 92-4. That discovery is due for a response by Defendants on or about September 12, 2016. The District Court granted Defendants an additional forty-five days to respond to the Plaintiffs' discovery at the hearing before the Court on July 29, 2016.¹

• • •

¹If the discovery had been answered when due, Plaintiffs would have had the responses on or about July 9, 2016 and would have already begun the deposition phase of the discovery plan or filed a motion to compel.

1 **2. DISCOVERY REMAINING TO BE COMPLETED**

2 Local Rule 26-4(2) requires a specific description of the discovery that remains to be
 3 completed. Once documents have been produced and interrogatories have been answered,
 4 subpoenas will be issued for documents under the control of third parties and the Defendants'
 5 Depositions will be taken. Discovery will be conducted on any affirmative defenses raised in the
 6 Answer which has yet to be filed by the Defendants. Discovery will be conducted on any
 7 counter-claims alleged by the Defendants in their Answer, which has yet to be filed. Experts
 8 will then be designated and deposed.

9 **3. REASONS REMAINING DISCOVERY IS NOT YET COMPLETED**

10 The Federal Rules of Civil Procedure allow only one deposition per witness without leave
 11 of the Court. *Federal Rules of Civil Procedure 30(a)*. The Plaintiffs wish to obtain documents in
 12 advance of the depositions so that the depositions are more productive. Plaintiffs would prefer to
 13 have an Answer and any counter-claims filed prior to Defendants' depositions so that questioning
 14 can be conducted on all affirmative defenses and any counter-claims.

15 Plaintiffs require financial documents to obtain expert reports for expert witness
 16 designations. The Defendants have provided no quarterly reports on the income of the joint
 17 venture vacation rental property since early 2014. When the business was started, quarterly
 18 reports were promised and provided. This litigation was filed in 2014 and no financial
 19 information has been provided to Plaintiffs since the litigation began.

20 The Court anticipated that the Plaintiffs would file additional requests for production of
 21 documents if the Defendants produced summaries in response to the first Request for Production
 22 of Documents. The Court stated source documents would later be subject to production on
 23 request if the Defendants produced summaries rather than original documents. (See Exhibit 1,
 24 page 41, lines 16-25 and page 42, lines 1 through 11). The Court acknowledged the effect of the
 25 document production issues on the expert phase of the Discovery Plan.

26 **4. SCHEDULE FOR COMPLETING DISCOVERY**

27 Local Rule 26-4(4) requires a proposed schedule for completing all remaining discovery.

1 Submitted herewith as Exhibit 2 is the Amended Proposed Discovery Plan filed herein on August
2 10, 2016. (Doc. 94). Plaintiffs respectfully request that the Court consent to the Amended Plan
3 and order the same.

4

5 **CONCLUSION**

6 The discovery dates set forth in the Proposed Amended Joint Discovery Plan filed August
7 10, 2016 should respectfully be approved by the Court based upon the forgoing showing of good
8 cause.

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10 DATED this 1st day of September, 2016.

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12 */s/ Elizabeth J. Foley*
13 ELIZABETH J. FOLEY
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Las Vegas, Nevada 89106
14 Attorney for Plaintiffs

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18 **CERTIFICATE OF SERVICE**

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20 Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 1st day of September, 2016, I caused
21 the document entitled **MOTION TO MODIFY SCHEDULING ORDER**, to be served by
22 electronically transmitting the document to the Clerk's Office using the CM/ECF System for
23 filing and transmittal of a Notice of Electronic Filing.

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23 *s/s Debbie Skillin*
An Employee of Elizabeth J. Foley